

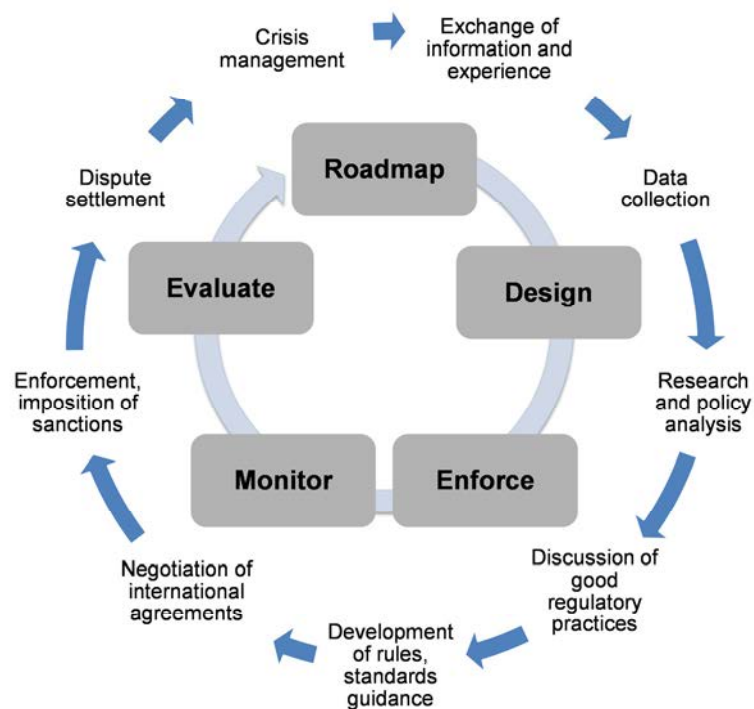
## Chapter 2

### **The contours of international regulatory co-operation within international organisations**

*International organisations contribute to regulatory co-operation among their members through various ways. They facilitate the development of common language and the comparability of approaches and practices across jurisdictions. They provide the institutional framework and technical expertise to help countries develop international legal and policy instruments and standards, align their regulatory approaches, and build capacity. Sometimes they contribute to dispute resolution among members, and facilitate crisis management. They do so by providing platforms for continuous discussions across members and by engaging with various stakeholders. This chapter analyses the answers to the 2015 OECD Survey of International Organisations on the activities of international organisations in support of regulatory co-operation, the actors involved and the objectives pursued.*

OECD (2014) identifies a number of areas where international organisations (IOs) contribute to international regulatory co-operation (IRC) among members. These areas can be mapped against the cycle of regulatory governance as provided in OECD (2011) from the design phase of rules to their monitoring, evaluation and feedback into the rule-making process. Against this background, the survey identified nine areas where IOs are active and provide their members platforms and opportunities for co-operation. They involve exchange of information and experience, data collection, research and policy analysis, discussion of good regulatory practices, development of rules, standards and guidance, negotiation of international agreements, enforcement activities including imposition of sanctions, dispute settlement and crisis management (Figure 2.1).

Figure 2.1. Areas of regulatory co-operation and the rule-making cycle

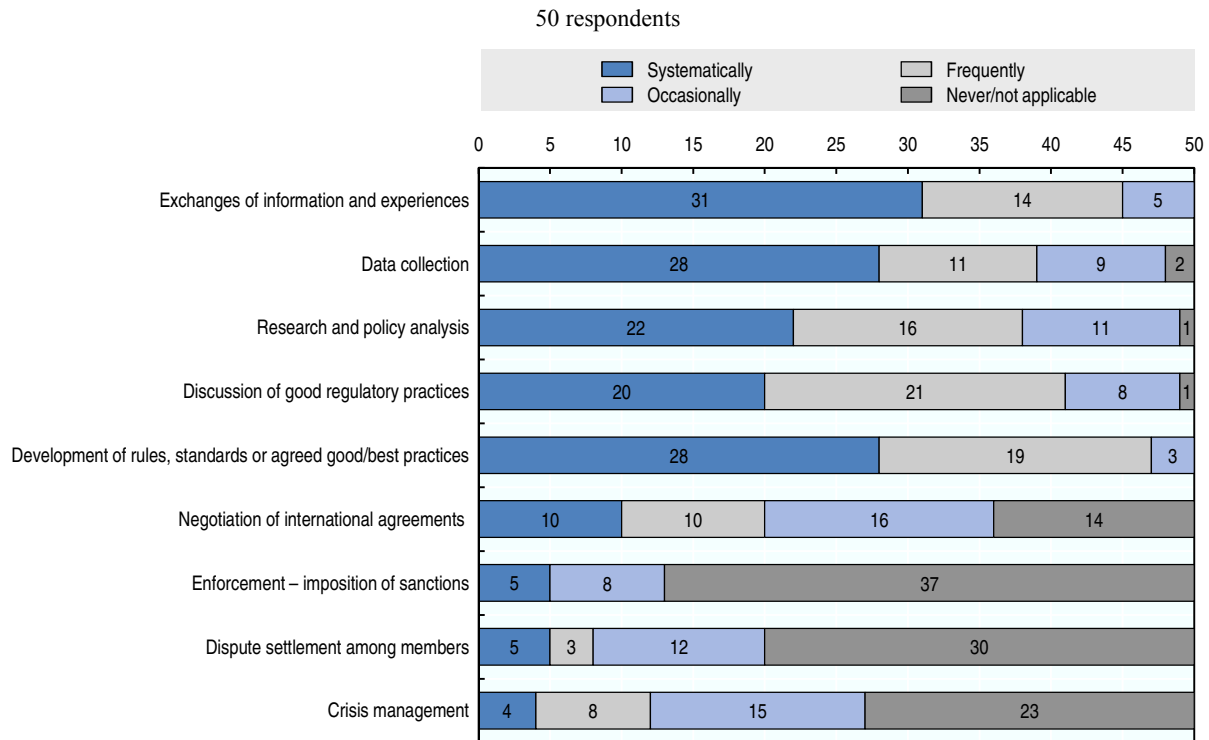


OECD (2014), *International Regulatory Co-operation and International Organisations: The Cases of the OECD and the IMO*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264225756-en>.

## IRC processes and activities

The survey results show the strong involvement of the responding IOs in the upstream activities of the policy cycle (Figure 2.2). All IOs, without exception, are involved in the development of rules, standards and best practice either systematically, frequently or occasionally (for only 3 IOs). All are also involved in exchange of information and experience. Most, but less systematically, undertake data collection; research and policy analysis; and provide for discussion of good regulatory practices. The formal area of negotiation of international agreements is less systematically undertaken by IOs (but remains an important activity for 20 IOs, either systematically or frequently). By contrast, the downstream activities of enforcement (systematic for 5 IOs), dispute settlement (systematic for 5 IOs, and frequent for 3) and crisis management (systematic for 4 IOs and frequent for 8) are clearly much less covered by IOs.

Figure 2.2. Which of the following IRC processes take place within your organisation?



Source: OECD Survey of International Organisations, 2015.

The case of the OECD illustrates this result well (OECD, 2014). The OECD is involved in the activities that precede standard-setting, including the collection and exchange of information and the setting of agendas, goals and strategies. The development of legal instruments and policy standards is not systematic but frequent. The OECD also contributes to the monitoring of its legal instruments. However, even for the few legal instruments that provide some kind of dispute settlement mechanisms (e.g. the Codes of Liberalisation and the Guidelines for Multinational Enterprises which form an integral part of the Declaration on International Investment and Multinational Enterprises), the OECD does not have a formal sanction regime.

Another illustrative example of IO activities is provided by the OIE. The OIE is systematically involved in exchange and dissemination of information to member countries on global animal disease situations. It is also very active in collecting data and producing scientific information on animal disease control. The development of legal instruments (normative documents, standards and guidelines relating to animal disease control methods and to preventing the introduction of diseases via trade) is also systematic. By contrast, the OIE does not have a mandate to “enforce” the implementation of its standards and norms and it cannot apply sanctions. However, given its recognised status under the WTO/OMC SPS Agreement, the standards adopted by the OIE may in some cases be relevant to specific WTO/OMC dispute settlement cases. Other downstream activities, such as dispute settlement or crisis management, are occasional. For instance, OIE collaborates with UN agencies (particularly WHO and FAO) on the management of global health crises.

Table 2.1 provides a list of IOs directly involved in the downstream activities of the policy cycle. Beyond the limited number of examples, the table illustrates the fact that the nature of the IO has, to some extent, an impact on the types of IRC activities. While all IOs are involved in the development of rules, standards and best practice regardless of their type, the IOs involved in the downstream activities of dispute settlement and crisis management are almost exclusively IGOs or secretariats of convention (e.g. state-led). The sampled trans-governmental networks of regulators (TGNs) and international private standard setters do not perform such activities, except on an occasional basis. The peer to peer nature of the co-operation among regulators and other stakeholders is likely to explain these results. As horizontal collaboration, they support the development of agreements among their members but do not necessarily provide means to manage crisis and disputes. In addition, many of the IGOs involved in downstream activities are regional organisations. The size of membership and potentially the homogeneity and geographical proximity of members may explain these results: the smaller and more homogeneous the membership, the easier it might be for the IGO to venture in these resource-intensive downstream activities.

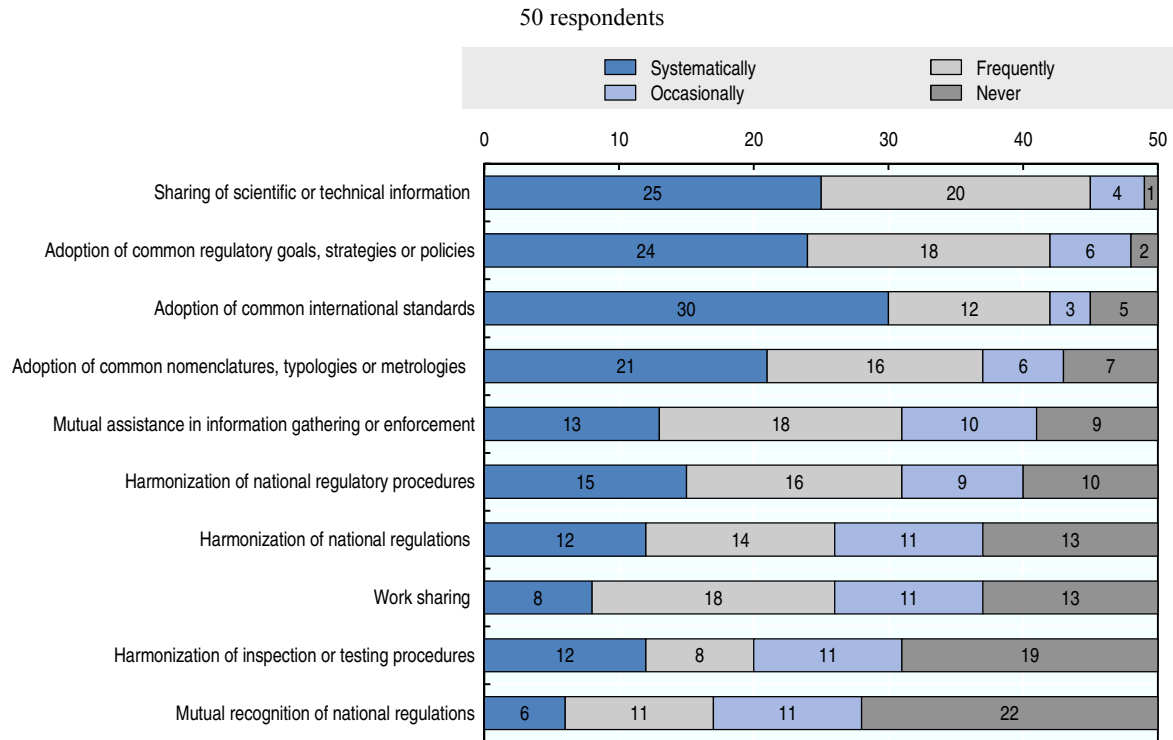
Table 2.1. **IOs involved systematically or frequently in downstream activities**

	Systematically	Frequently	Selected examples
<b>Enforcement</b>	IAF, ILAC, CITES, OZONE, WTO/OMC		CITES recommends sanctions in the form of “trade suspension” (Reeve, 2006). In some cases, these recommendations have been followed by sanctions by the UN ( <a href="http://www.cites.org/eng/news/sundry/2014/20140203_un_sanctions.php">www.cites.org/eng/news/sundry/2014/20140203_un_sanctions.php</a> ).
<b>Dispute settlement among members</b>	EU, CITES, OZONE, WIPO, WTO/OMC	OAS, COMESA, CARICOM	In 2001 CARICOM member States signed a specific agreement establishing the Caribbean Court of Justice to address treaty disputes. WIPO is very active in the settlement of intellectual property disputes between private parties (via its Arbitration and Mediation Center: <a href="http://www.wipo.int/amc/en/center">www.wipo.int/amc/en/center</a> ) while WTO/OMC deals with dispute settlement between States only ( <a href="http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm">www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm</a> ).
<b>Crisis management</b>	EU, CITES, IAEA, OZONE,	OAS, COMESA, UPU, OSCE, UNIDO, IMF, NATO, UNWTO	Through its Incident and Emergency Center (IEC), the IAEA works as a centre for co-ordination of international assistance in emergency preparedness and response to nuclear and radiological safety or security related incidents and emergencies. The IEC co-ordinates inter-agency response to nuclear and radiological safety or security related incidents and emergencies under the “Joint Radiation Emergency Management Plan of the International Organizations”.

Source: OECD Survey of International Organisations, 2015.

Regulatory co-operation may be embedded in various forms, outputs and activities (Figure 2.3). Based on the survey answers, in most cases, co-operation through IOs materialises in the sharing of scientific or technical information (systematic for 25 IOs and frequent for 20), the adoption of common regulatory goals, strategies or policies (systematic for 24 IOs and frequent for 18) and the adoption of common international standards (systematic for 30 IOs and frequent for 12). Somewhat less frequently but still important, co-operation takes the form of the adoption of common nomenclatures, typologies and metrologies (for 43 IOs among which 21 do it systematically).

Figure 2.3. **How frequently do the rules, standards and other forms of IRC adopted by your organisation incorporate the following activities?**



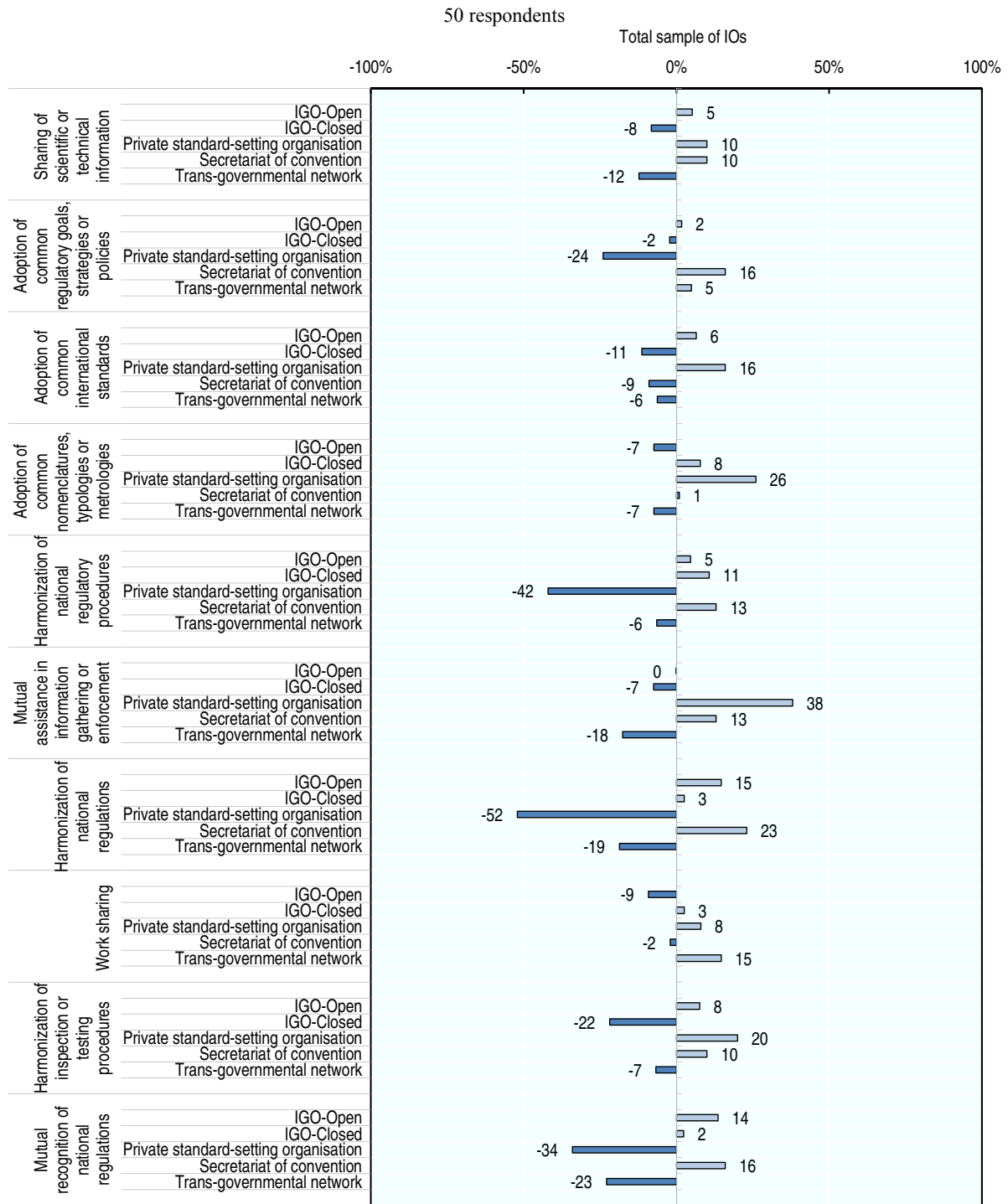
Source: OECD Survey of International Organisations, 2015.

More stringent outputs of co-operation such as harmonisation of regulations, regulatory procedures or inspections are less common among IOs, although they are not completely absent:

- For instance, the UNECE offers a framework for globally harmonised regulations on vehicles, by hosting the World Forum for Harmonization of Vehicle Regulations (WP 29).
- PIC/S is engaged in the harmonisation of procedures for handling rapid alerts and recalls arising from quality defects or the standard operating procedure on inspection report format.
- OIML, in order to harmonise national regulatory procedures, has developed some specific guidelines and documents, such as the OIML D1 that provides guidance on the issues that should be considered when elaborating a law on metrology.
- IMO has produced some guidelines for flag State inspections, certificates and Memoranda of Understanding (MoUs) of port State control in order to harmonise inspection procedures.

Mutual recognition is the least reported activity. As an example, the ILAC resorts to it frequently but, at the same time, suggests that mutual recognition can be a challenge where national regulations vary from international standards. Similarly, OIML has been attempting to expand its mutual acceptance arrangement for test results for regulated instruments, but with limited take up.

Figure 2.4. IRC activities by nature of organisation



Notes: The figure considers both the IOs that answered “systematically” and “frequently” and compares the averages for the specific IO groups to the average for the total sample of IOs. In this figure, the EC is included in the category of closed-membership IGOs.

Source: OECD Survey of International Organisations, 2015.

These results may illustrate a greater willingness of IO members to share experience and develop a common language – sharing information; adopting common nomenclatures, goals and standards – than to co-ordinate and align action – work sharing; harmonisation of procedures and regulations; mutual recognition of regulations – in line with the level of autonomy and sovereignty they are willing to give up in the interest of international co-ordination.

Figure 2.4 maps IRC activities by nature of organisation as defined in chapter I (the classification of IOs across types is available in Annex, Table A.1). It compares the occurrence of a specific IRC activity for a specific IO group to its occurrence for the total sample of IOs. A negative value underlines an activity that is less represented in the group under consideration compared to the full sample of IOs. A positive value underlines an activity that is more represented.

Compared to the full sample, private standard-setting organisations are more heavily involved in the adoption of common standards and nomenclatures and less in the adoption of common regulatory goals, harmonisation of regulations and mutual recognition. There are also important differences across types of IOs in relation to more stringent outputs of co-operation such as harmonisation of national regulations (less common for private standard-setting organisations and more common for secretariats of conventions), harmonization of inspections (less common for closed membership IGOs and more common for private standard-setting organisations), and mutual recognition (less common for private standard setting organisations and TGNs, and more common for secretariats of conventions).

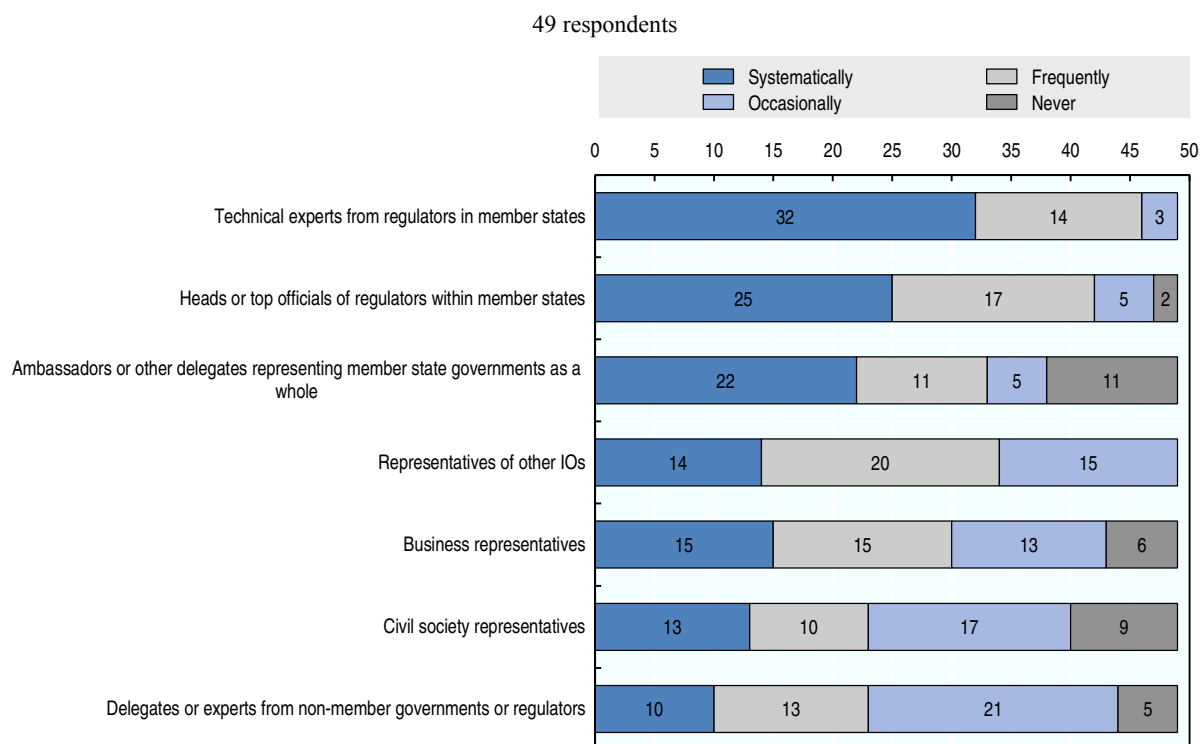
It is also noteworthy that IGOs are involved in all types of activities, sometimes within the same organisation. As an example, UNECE may serve in some sectors as a standard-setting organisation (e.g. for fresh fruits and vegetables) and in others for the harmonisation of regulations (WP29 as referred above).

## Actors of IRC

In line with the strong involvement of IOs in technical activities, such as exchange of information and practices, most IOs report strong participation of technical experts in the IRC processes (Figure 2.5). The survey indicates that official country representatives (ambassadors or other delegates) and top officials also follow closely the IRC activities of IOs. For 34 IOs, representatives of other IOs participate either systematically or frequently in the IRC processes, a feature likely to support greater co-ordination of agenda and action across IOs.

Although the survey results show that the IOs primarily provide a platform for peers (regulators or experts in a specific field) to meet and exchange, business and civil society representatives are also frequently involved. They contribute to the IRC processes of 45 IOs, at least occasionally. The only IOs reporting that neither business nor civil society representatives participate in their IRC processes are IAEA, NATO, OTIF and WTO/OMC. By contrast, 11 IOs systematically involve both business and civil society representatives (ASTM International, BRS Conventions, CITES, EU, IMO, ITU, SAICM, UNECE, UNEP, UPU, WMO). Discussions held as part of the OECD meetings of international organisations underline the willingness of many IOs to increase this participation, as well as the challenges they face to make it meaningful and effective (see also the chapter on “How do international organisations ensure the quality of their rule-making process?”).

Figure 2.5. Which of the following actors participate in IRC processes within your organisation?



Note: The information is missing for IEC.

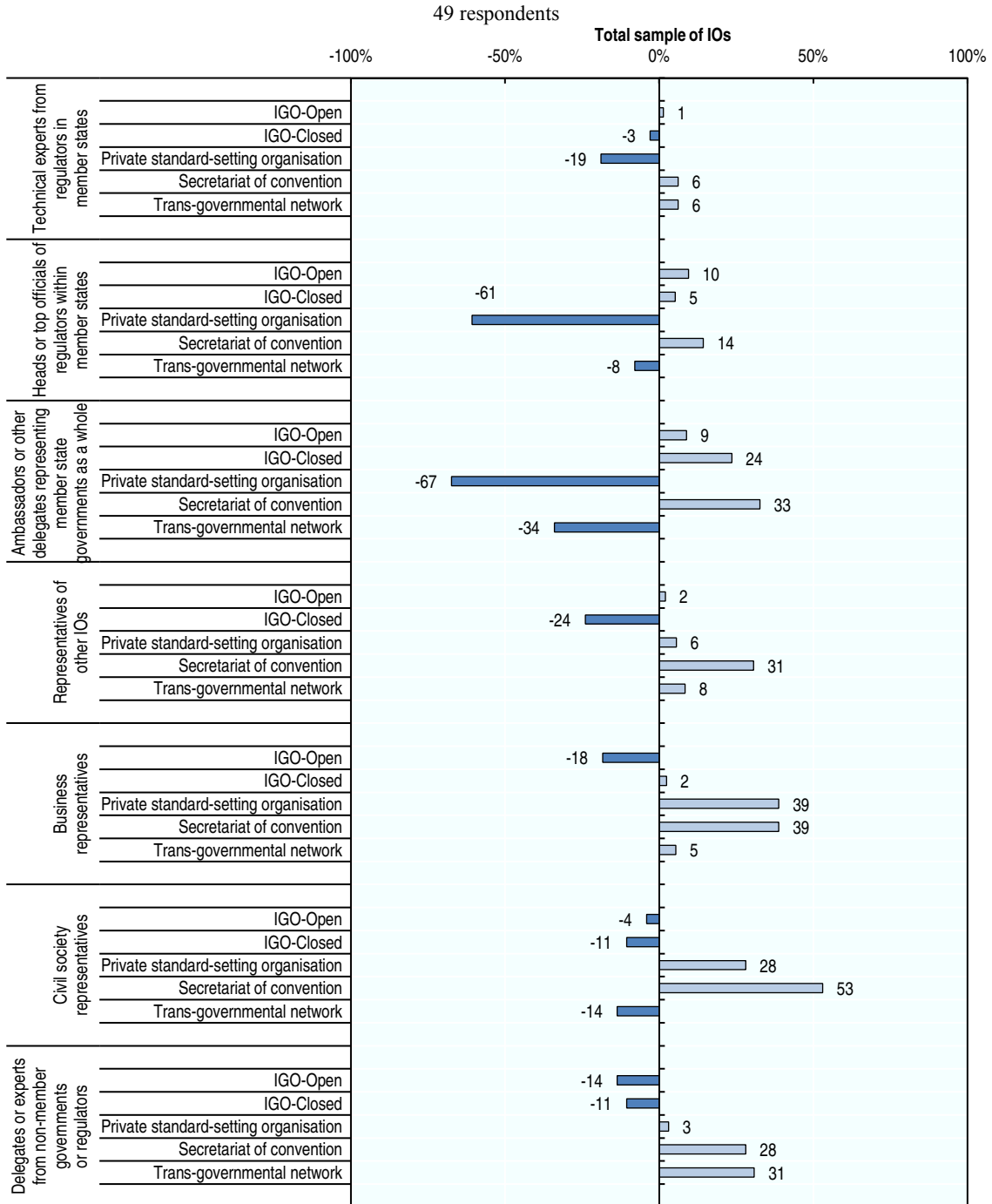
Source: OECD Survey of International Organisations, 2015.

Private standard-setting organisations differ from the rest of the sample in relation to actors of IRC (Figure 2.6). They neither involve ambassadors or other delegates representing member state governments, nor the heads or top officials of regulators. They involve much less than the rest of the sample technical experts from regulators in member states, or delegates and experts from non-member state governments or regulators. By contrast, they involve more business representatives and civil society than the rest of the sample. Similarly, reflecting their nature of peer to peer platforms, TGNs involve less ambassadors and top officials than IGOs.

Closed-membership and open-membership IGOs enjoy relatively similar involvement of representatives from governments or regulators (technical experts; heads or top officials of regulators; ambassadors or other delegates), civil society representatives and delegates from non-members. However, closed-membership IGOs tend to involve more high-level representatives (ambassadors) than open-membership IGOs and less representatives from other IOs than the total sample. Open-membership IGOs tend to involve less business representatives than the total sample. Secretariats of conventions seem to provide strong stakeholder platforms both for government and non-governmental representatives: they involve all levels of government representatives, but also representatives of other stakeholders – such as business and civil society representatives, delegates from non-members and from other IOs – more so than the total sample.



Figure 2.6. Actors involved in IRC processes by nature of organisation



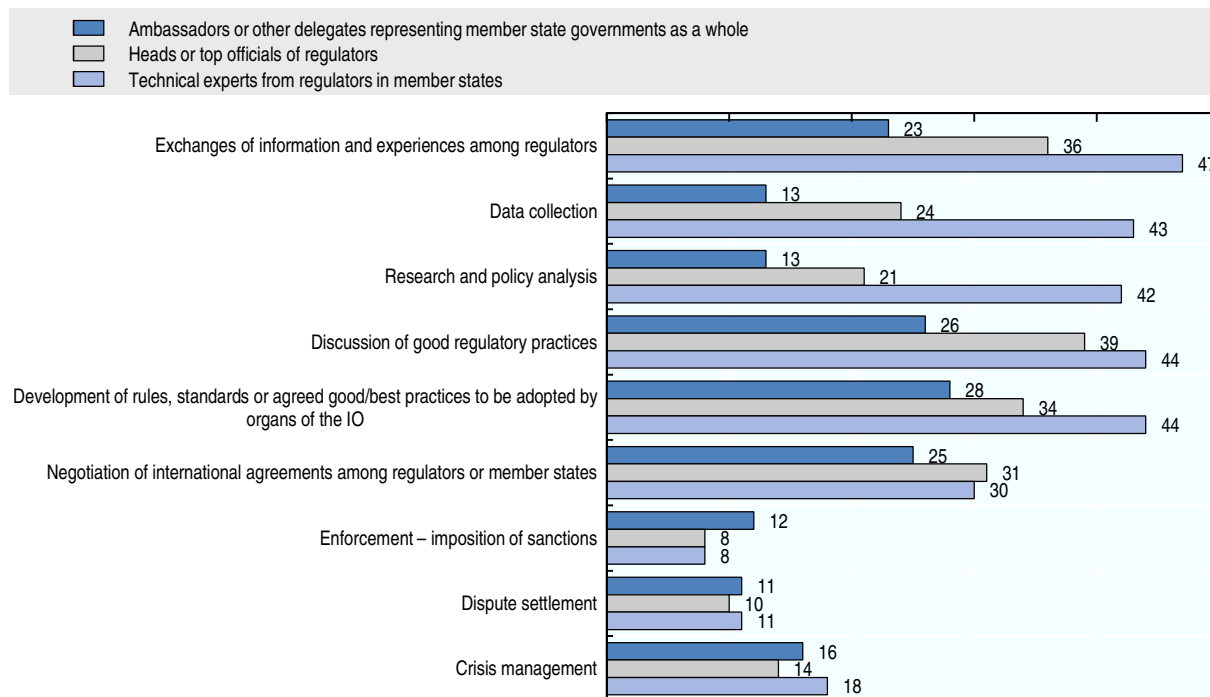
Notes: The figure considers both the IOs that answered “systematically” and “frequently” and compares the averages for the specific IO groups to the average for the total sample of IOs. In this figure, the EC is included in the category of closed-membership IGOs.

The information is missing for IEC.

Source: OECD Survey of International Organisations, 2015.

Figure 2.7. The participation of officials in IRC processes

48 respondents

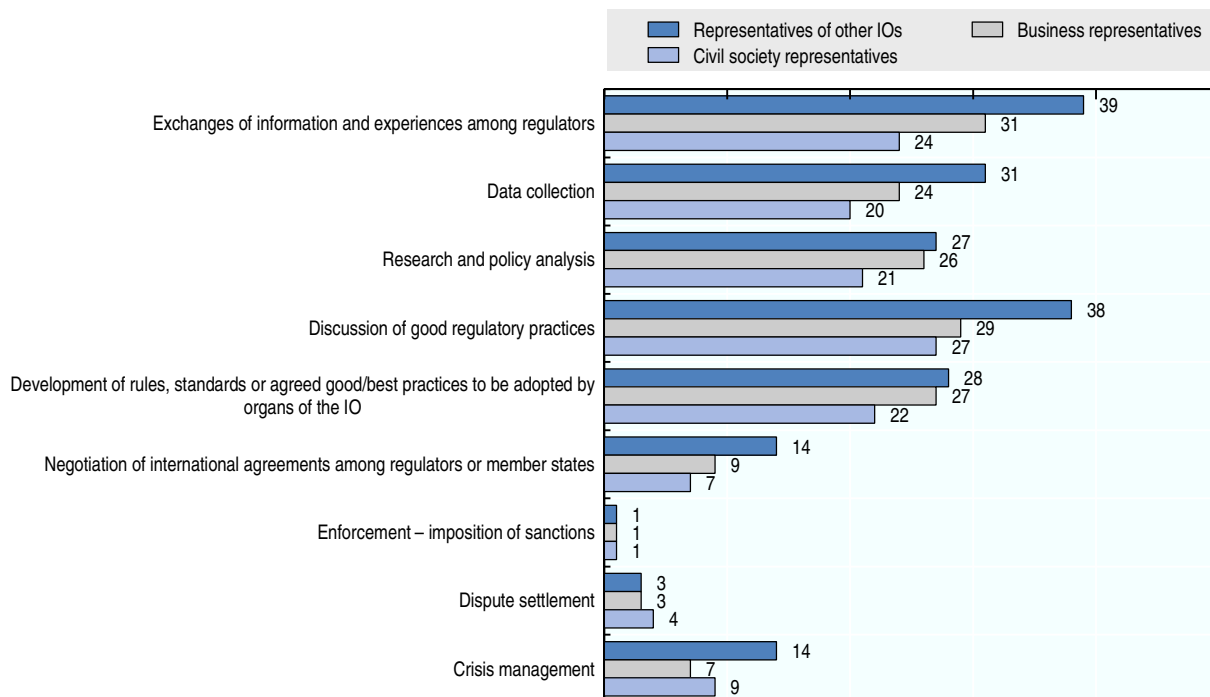


Note: The information is missing for IEC and OTIF.

Source: OECD Survey of International Organisations, 2015.

Figure 2.8. The participation of other stakeholders in IRC processes

48 respondents



Note: The information is missing for IEC and OTIF.

Source: OECD Survey of International Organisations, 2015.

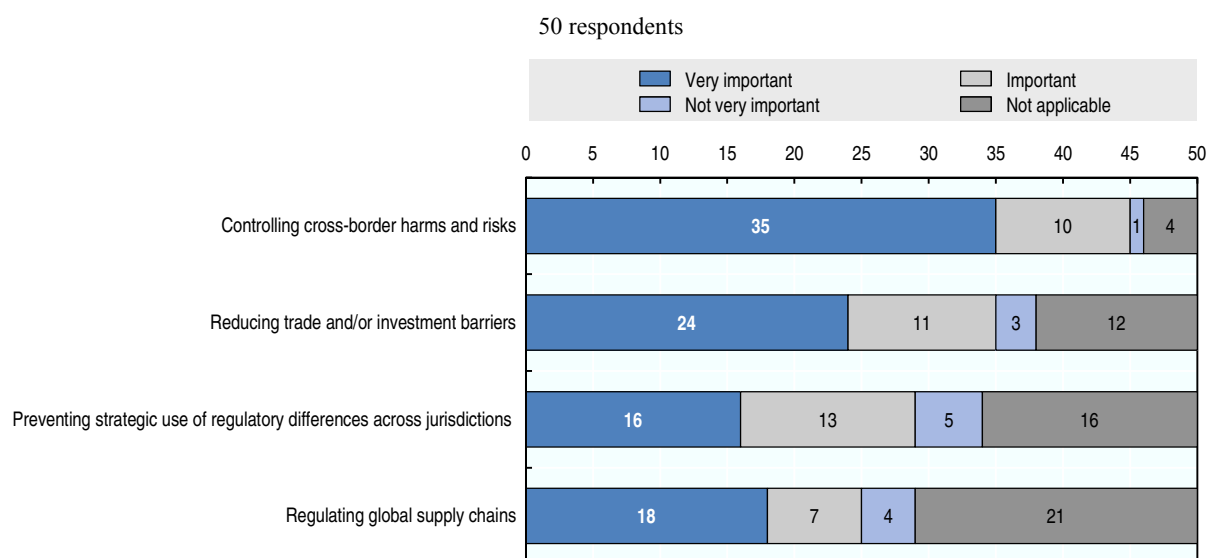
Mapping the actors involved in specific IRC processes (Figure 2.7) confirms the heavy involvement of technical experts in the technical phases of the work: i) exchange of information and experiences; ii) data collection; iii) research and analysis; iv) discussion of good regulatory practices; and v) development of rules, standards and best practices for adoption by the IO. The formal activity of negotiating international agreements and the downstream (also formal) activities of imposing sanctions, dispute settlement and crisis management, involve proportionally higher and more political representation from members (top officials and ambassadors). Similarly, key stakeholders – business representatives, civil society representatives and staff from other IOs – are mainly engaged in the technical (upstream) phases of the work (Figure 2.8). They are largely absent from more formal activities, especially enforcement and dispute settlement.

## Objectives and benefits of IRC

A large majority of IOs pursue IRC in order to control cross-border harms and risks (Figure 2.9). Reducing barriers to trade and investment is an important objective for half of the respondents. These results show that most IOs see their role as supporting the promotion of societal objectives. While important, the economic agenda – including market openness – comes second (after the societal imperative of controlling harms and risks). This confirms the finding of OECD (2013) and subsequent OECD work that the IRC agenda goes beyond trade and economic considerations and contributes to achieve the regulatory objectives of countries.

A number of IOs volunteer additional objectives (Box 2.1), including developing quality system requirements (PIC/S), enhancing resilience to political and economic shocks (ESCWA), promoting growth, job cohesion, regional and sustainable development (EC), consumer protection (OIML), conflict prevention, management and resolution (OSCE), and creating a regulatory framework that supports global connectivity (IATA).

Figure 2.9. Which of the following objectives does your organisation pursue by providing a forum for IRC?



Source: OECD Survey of International Organisations, 2015.

### Box 2.1. Objectives and mandates of a sample of IOs

The main objectives pursued by the OAS are: i) to develop, promote, and implement the Inter-American Program for the Development of International Law; ii) to provide advisory services concerning international law and the development and codification of inter-American law; iii) to support the follow-up mechanisms for certain inter-American conventions; iv) to serve as a depository and source of information for inter-American treaties and the agreements of the OAS and its organs; v) to disseminate information on the legal instruments of the OAS and its legal programmes; and vi) to provide other services related to inter-American legal co-operation.

The mandate of the IAIS is to promote effective and globally consistent supervision of the insurance industry in order to develop and maintain fair, safe and stable insurance markets for the benefit and protection of policyholders, and to contribute to global financial stability. Established in 1994, the IAIS is the international standard-setting body responsible for developing and assisting in the implementation of principles, standards and other supporting material for the supervision of the insurance sector. The IAIS also provides a forum for Members and stakeholders to share experiences and understanding of insurance supervision and insurance markets.

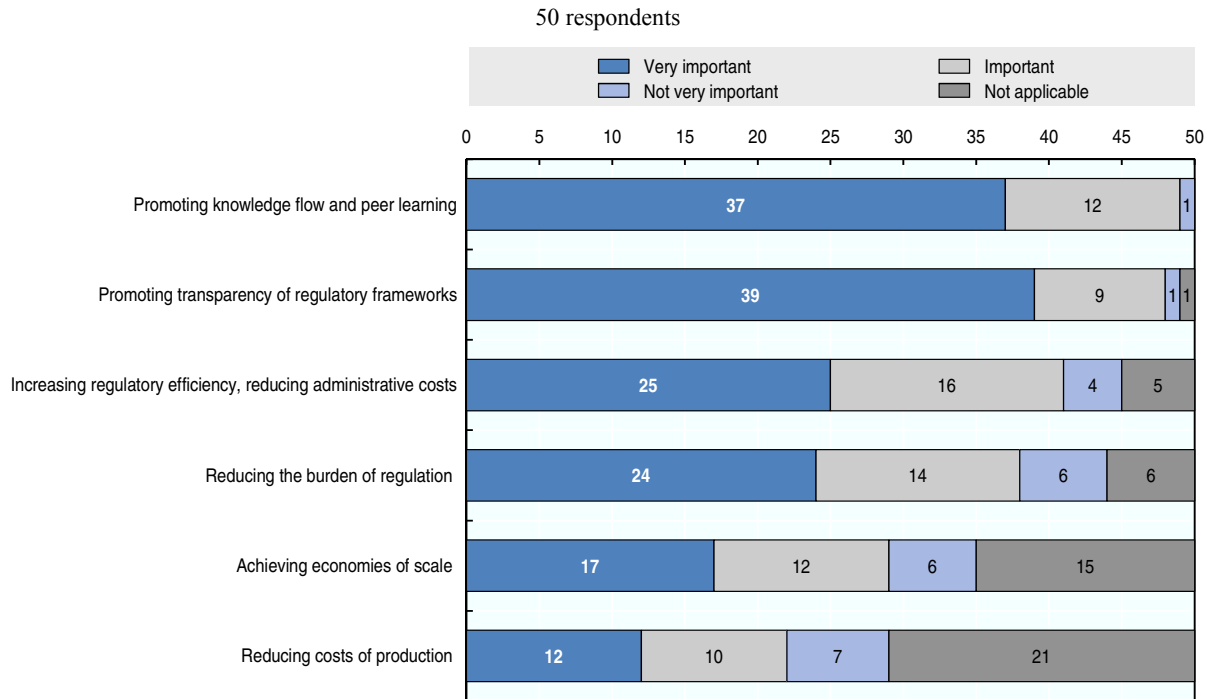
UNODC is mandated to assist member States in their struggle against illicit drugs, crime and terrorism. In the United Nations Millennium Declaration, member States also resolved to intensify efforts to fight transnational crime in all its dimensions, to redouble the efforts to implement the commitment to counter the world drug problem and to take concerted action against international terrorism. The three pillars of the UNODC work are: i) field-based technical co-operation projects to enhance the capacity of member States to counteract illicit drugs, crime and terrorism; ii) research and analytical work to increase knowledge and understanding of drugs and crime issues and expand the evidence base for policy and operational decisions; iii) normative work to assist States in the ratification and implementation of the relevant international treaties, the development of domestic legislation on drugs, crime and terrorism, and the provision of secretariat and substantive services to the treaty-based and governing bodies.

The OIE is the international reference organisation for animal health. The main objectives of the organisation are: i) to ensure transparency in the global animal disease situation; ii) to collect, analyse and disseminate veterinary scientific information; iii) to encourage international solidarity in the control of animal diseases; iv) to safeguard world trade by publishing health standards for international trade in animals and animal products; v) to improve the legal framework and resources of national Veterinary Services; vi) to provide a better guarantee of food of animal origin and promote animal welfare through a science-based approach.

*Source:* OECD Survey of International Organisations, 2015.

For most IOs, the main benefits provided by their IRC activities come from increased transparency of regulatory frameworks, knowledge flow and peer learning through exchange of information (Figure 2.10). A second set of benefits includes the efficiency gains and reduction of regulatory burdens that IOs can promote through the sharing of tasks and increased coherence across regulatory requirements. Finally, for a quarter of the sample, economic benefits such as economies of scale and cost reductions represent important benefits. A number of IOs volunteer additional benefits, including ensuring the safety, effectiveness and quality of imported products (PIC/S), allowing developing countries to learn from the experiences of developed countries (SAICM), protecting human health and the environment through the development of standards (BRS Conventions), confidence-building in political/military area (OSCE), and improving information for consumers and other stakeholders (IATA).

Figure 2.10. **What are the benefits your organisation offers to its members by providing a forum for IRC?**



Source: OECD Survey of International Organisations, 2015.

For a substantial number of IOs – some 21 of them –, the objectives of IRC have changed with time. In many cases, these changes reflect environmental transformations or the advent of new political priorities for members (see Box 2.2). For some 16 IOs, the objectives of IRC have not changed in themselves, but their activities to continue fulfilling their mandate and objectives have evolved. For instance, from 1971 to 1995, PIC/S consisted of a Mutual Recognition Agreement (MRA) between contracting States on inspection certificates called the Pharmaceutical Inspection Convention (PIC). In the early 1990s, to continue the objectives of PIC but on a voluntary basis, an informal agreement between regulatory authorities was launched. The initial MRA was replaced by a voluntary sharing of inspection reports. Similarly, the ILAC is currently in the process of expanding its MRA to include proficiency testing providers and reference material producers. In the case of the WMO, the activities have developed in response to the needs of its members, the scientific evidence base, and the complexity of the task to achieve the IRC objectives. By contrast, for a number of IOs, there has been little evolution in the objectives or activities. This, for instance, is the case of the OAS, the BRS Conventions, the APEC and the IMF.

**Box 2.2. The evolution of objectives of a sample of IOs**

The scope of work of the IMO has grown gradually over the last decades, driven by developments in the industry and society. These developments have produced a shift in the objectives and IRC activities pursued by IMO. In the early years the IMO concentrated on developing international safety standards (the majority of conventions were adopted between 1969 and 1979). In the 1980s the attention shifted from standard setting to improving implementation of the conventions, in particular by providing technical assistance to developing countries. From the 1990s the IMO developed a more pro-active and preventive approach, in contrast to earlier periods which were characterised as more reactive to disasters. The last decades have seen the emergence of various new activities related to environmental matters, climate change, maritime security, piracy, armed robbery and ocean governance.

In the case of UNECE, while the main goal has remained the same (i.e. strengthening the economic relations of European countries, both among themselves and with non-European countries), the specific objectives have evolved, reflecting fundamental changes in politics and international relations. During the “cold war”, UNECE was the only instrument of dialogue and co-operation between two radically different systems. After the transition, the programme of work of the organisation has shifted to focus on contributing to sustainable development through concrete and result-oriented activities that address the needs of countries of the region and beyond.

In the case of OSCE, the objectives of IRC have changed in response to the dramatic evolution of the global security environment. In particular, the OSCE’s work has increasingly focused on tackling transnational security threats.

*Source:* OECD Survey of International Organisations, 2015.

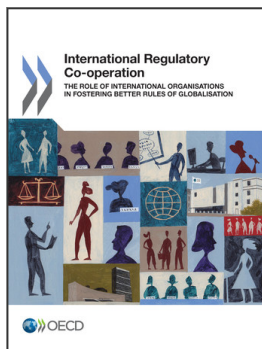
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